U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

5107 Leesburg Pike, Suite 2500
Falls Church, Virginia 22041

July 22, 2004

MEMORANDUM

TO: All Immigration Judges
              All Court Administrators
              All Judicial Law Clerks
              All Immigration Court Staff

FROM: The Office of the Chief Immigration Judge

SUBJECT: Operating Policies and Procedures Memorandum 04-04:
              Hearings Conducted Through Telephone Conference And Video Conference

I.   Introduction

This Operating Policies and Procedures Memorandum (OPPM) provides guidance for cases in which an immigration judge conducts a hearing through telephone conference or through video conference.

II.   Creating A Clear Record Of The Location Of The Hearing

The regulation at 8 C.F.R. § 1003.14 provides that "[j]urisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by the Service." When a charging document is filed with an Administrative Control Immigration Court pursuant to 8 C.F.R. § 1003.11, the proceedings may actually take place in a location other than where the charging document is filed. Thus, it is important to record the actual location of the hearing.

An immigration judge who conducts a hearing either telephonically or through video conference must create a clear record of where the hearing is taking place. At the beginning of each session of the hearing, the immigration judge must identify himself or herself for the record. The immigration judge should then note that he or she is sitting via telephone or video conference at the hearing location (i.e., the location where the case is docketed for hearing). All hearing locations are published in the Office of the Chief Immigration Judge's Administrative Control Immigration Courts list. This list is made available to the public pursuant to 8 C.F.R. § 1003.11, and is available on EOIR's Intranet and Internet (which can be accessed through the Virtual Law Library).
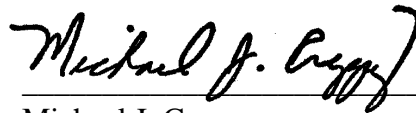
The immigration judge should also note the location of the respondent, the respondent's counsel or representative, if any, and counsel for the Department of Homeland Security ("DHS"), in order to create a clear and complete record. For example, at the beginning of a hearing conducted through video conference by a Chicago immigration judge who is sitting in Chicago and conducting a hearing in our Kansas City, Missouri hearing location, the immigration judge should state: "This is Immigration Judge John Doe of the Chicago Immigration Court sitting, via video conference, at the hearing location in Kansas City, Missouri. The respondent, the respondent's attorney, and the attorney for the Department of Homeland Security are all present in Kansas City, Missouri."

The immigration judge must follow the steps outlined above each time he or she commences a session of a hearing through video or telephone conference, and should do so at the beginning of any such hearing. In addition, the law that is to be applied to proceedings conducted via telephone or video conference is the law governing the hearing location. In the example set forth above, the law applied would be that governing Kansas City, Missouri, the United States Court of Appeals for the Eighth Circuit.

III.   <u>Orders and Decisions Issued in Hearings Conducted Through Telephone Or Video Conference</u>

Any order or decision issued by an immigration judge in a hearing conducted through video conference or telephone conference should include a caption which states that the hearing was conducted through video conference or telephone conference. The caption must also state the location of the hearing, as set forth in section II above. The caption should also include the base city court and address for purpose of correspondence and post-hearing motions.

If you have any questions regarding this OPPM, please contact Brenda O'Malley, Counsel to the Chief Immigration Judge, at (703) 305-1247, or your Assistant Chief Immigration Judge.

Michael J. Creppy
Chief Immigration Judge